

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

LASHUN SMITH, INDIVIDUALLY AND ON BEHALF OF ALL WRONGFUL DEATH BENEFICIARIES OF LEE DEMOND SMITH, DECEASED	§	PLAINTIFFS
	§	
	§	
	§	
	§	
v.	§	CAUSE NO. 1:07cv1256-LG-JMR
	§	
HARRISON COUNTY, MISSISSIPPI, by and through its Board of Supervisors; et al.	§	DEFENDANTS
	§	

ORDER DISMISSING DANIEL EVANS AND KARL STOLZE WITHOUT PREJUDICE

BEFORE THE COURT are Defendants Daniel Evans [60] and Karl Stolze's [62]

Motions to Dismiss for Failure to Timely Serve Process. Evans and Stolze argue that they have not been served with process. Plaintiff Lashun Smith did not respond to the Motions.

On February 5, 2009, the Court ordered Plaintiff to show cause why these two should not be dismissed. Plaintiff timely responded to the Order [84] and does not appear to contest dismissal of these two defendants pursuant to FED. R. CIV. P. 4(m) and 12(b)(4). "Based on the information and/or documentation provided to the undersigned counsel, it appears that the Defendants, Daniel Evans and Karl Stolze, were either not present and/or no longer employed with the Harrison County Sheriff's Department at the time of the incident made the basis of this action." (Pl.'s Notice of Compliance to Show Cause Order at 1-2 (¶3)).

Accordingly, the Court finds that the motions should be granted.

IT IS THEREFORE ORDERED AND ADJUDGED that for the reasons stated above, Defendants Daniel Evans and Karl Stolze's Motions to Dismiss [60, 62] are **GRANTED**. Evans and Stolze are hereby dismissed without prejudice.

SO ORDERED AND ADJUDGED this the 19th day of February, 2009.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE